

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Virgin Mobile USA, L.P.</b>	:	
	:	<b>14-0475</b>
<b>Application for Limited Designation As An</b>	:	
<b>Eligible Telecommunications Carrier.</b>	:	

**PROPOSED ORDER**

By the Commission:

On July 23, 2014, Virgin Mobile USA, L.P. (“Applicant”) filed a verified application requesting Limited Designation from the Illinois Commerce Commission (“the Commission”) as a wireless Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Federal Telecommunications Act of 1996 (“the 1996 Act”), and Section 54.201(c) of the Rules of the Federal Communication Commission (“FCC”), 47 C.F.R. §54.201. Applicant requests that the Commission designate it as a prepaid wireless ETC provider in Illinois for the sole purpose of receiving federal universal service Lifeline support in the rural and non-rural geographic areas specified in this application. Applicant does not seek ETC status for the purpose of receiving support from any other federal or state universal service fund, nor does it seek to offer services in high-cost areas.

Applicant, a Delaware limited partnership authorized to transact business in Illinois, is a wholly-owned subsidiary of Sprint Corporation (“Sprint”) and provides Sprint’s prepaid wireless services on a common carrier basis. Applicant seeks ETC designation in every rural and non-rural incumbent local exchange carrier exchange area where Sprint provides wireless coverage in Illinois. Applicant was granted a Certificate of Service Authority by the Commission in Docket 12-0027 to provide Commercial Mobile Radio Service (“CMRS”) in Illinois. Applicant currently provides wireless ETC service in 41 jurisdictions and provides telecommunications service to consumers in all 50 states, Washington, D.C. and Puerto Rico.

Pursuant to notice as required by law and the rules and regulations of the Commission, a prehearing conference was held in this matter before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Chicago, Illinois on August 21, 2014. Applicant and Staff were represented by counsel. This matter was continued for status to October 24, 2014 and to December 17, 2014 for evidentiary hearing. At the December 17, 2014 hearing, Applicant filed Exhibit 1.0, Direct Testimony of James R. Burt (confidential and public versions), and Exhibits 1.1 - List of Wire Centers, 1.2 - Total Subscribers from July 2012 to July 2014 (conf), 1.3 – Subscribers by State (conf), 1.4 Lifeline Subscriber Count by State —as of July 2014

(conf), 1.5 – Applicant’s Compliance Plan, 2.1 – List of Exchanges, 2.2 Service Area Boundary Maps, and Exhibit 2.0, Mr. Burt’s Rebuttal Testimony (confidential and public versions).

Staff filed Exhibit 1.0 - Direct Testimony of Dr. James Zolnierrek with Attachment A (public and confidential versions), Exhibit 2.0 - Dr. Zolnierrek’s Rebuttal Testimony (public version only), Exhibit 3.0 - Dr. Zolnierrek’s Affidavit, Cross Exhibit 1 - Applicant’s Response to Staff Data Requests JZ 3.01 and 3.02, and Cross Exhibit 2 – Applicant’s Response to Staff Data Requests JZ 4.01 and 4.02.

At the conclusion of the December 14, 2014 hearing, the parties’ exhibits were admitted into evidence and this matter was marked “Heard and Taken”.

# I. Relevant Statutory Provisions

## Section 214

### (e) Provision of universal service

#### (1) Eligible telecommunications carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with [section 254](#) of this title and shall, throughout the service area for which the designation is received--

**(A)** offer the services that are supported by Federal universal service support mechanisms under [section 254\(c\)](#) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and

**(B)** advertise the availability of such services and the charges therefore using media of general distribution.

#### (2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an

additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 C.F.R. §54.201(c) Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

§54.201(d) A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

- (1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (2) Advertise the availability of such services and the charges therefore using media of general distribution.

## II. Applicant Position

### A. Direct Testimony of Mr. Burt

Mr. Burt testified that a list of wire centers that define Applicant's ETC service area is attached to his testimony as Exhibit 1.1. He testified that Applicant prefers ETC designation by wire center because it is often more precise than using rate centers or exchange areas. Every rate center or exchange has at least one wire center area, but many rate centers and exchanges have multiple wire centers. Sections 214(e)(2) and (e)(5) of the 1996 Act permit state commissions to designate Applicant's proposed ETC area, and the Commission has the authority to designate Applicant as an ETC consistent with its request.

47 C.F.R. §54.207(a) defines service area as "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." The FCC does not restrict how a state commission defines an

ETC's service area. A rural service area should not be smaller than a wire center. Also, 83 Ill. Adm. Code 736.555 allows an ETC service area to be exchanges or parts of exchanges. Applicant's proposed ETC service area as a wire center area is consistent with Section 736.555.

Mr. Burt testified that the FCC determined that Applicant owns Sprint's facilities for purposes of the "own facilities" requirement of Section 214(e) of the 1996 Act.

He further testified that, in satisfaction of Section 214(e)(1)(B) of the 1996 Act and 47 C.F.R. §54.405(b), Applicant will advertise the availability and rates of its Lifeline offerings through media of general distribution, including newspapers, television and radio. Applicant will also supplement its national direct- and shared- mail programs to include ETC service in Illinois. Applicant also intends to distribute brochures and posters at various state and local service agencies to inform customers of the availability of its Lifeline service. Current pricing for Applicant's wireless Lifeline service can be found at <http://www.assurancewireless.com/Public/MorePrograms.aspx>.

Applicant's advertisements will inform customers in easily understood language that the services are Lifeline; service may not be transferred to other individuals; customers must meet certain eligibility requirements; service is limited to one discount per household; documentation is required to qualify customers; and Applicant will provide the service. The application form will also state that customers who willfully make false statements can be punished by fine, imprisonment, or exclusion from the program.

Mr. Burt testified that Applicant, upon receiving ETC designation, will comply with 47 C.F.R. §54.101 and provide voice grade access to the public switched network; minutes of use for local service at no additional charge to end-users; access to emergency services; and toll limitation for qualifying low-income customers.


Applicant will provide voice grade service through Sprint's network. Customers will be able make and receive calls on the public switched network with a minimum bandwidth of 300 to 3000 Hertz. Applicant will provide service to customers within a reasonable time and at a reasonable cost.

With regard to minutes of use for local service at no additional charge, Applicant offers various Lifeline service options, including a plan free to customers after application of the discount. Applicant's included minutes of use and standard additional service features provide minutes of use for local service at no additional charge and provides comparable functionality to plans provided by other ILECs. The minutes in each of these offerings can be used for domestic long distance at no per-minute charge, and customers can Top Up additional minutes and texts at affordable rates. Applicant will not collect service deposits and will not charge a number portability fee.

Mr. Burt testified that Applicant also commits to providing customers with access to 911 and E911 service in all jurisdictions in its proposed service area that have 911

and E911 functionality. Applicant's customers will have access to emergency services regardless of service activation status or the number of remaining minutes, and will be able to call emergency services at no cost. Applicant also commits to timely paying all applicable E911 fees and will work with local PSAPs to make 911 and E911 service available to customers. Sprint's network delivers automatic numbering information and automatic location information, and it provides these services to Applicant.

47 C.F.R. §54.101 requires toll blocking as a means of limiting outgoing toll calls ("TLS"). Pursuant to the Lifeline Reform Order ("LRO"), the FCC requires an ETC to offer TLS at no charge only for service plans for which the ETC charges a fee for toll calls. Applicant treats the minutes in its Lifeline plans as "any distance minutes" and does not charge separately for domestic TLS. International calls are not permitted unless the customer has paid for the service allowing such calls. Further, customers are prevented from using service in excess of their prepaid amounts and, because Lifeline customers prepay, they will not be charged additional monthly fees. As a result, Lifeline customers will not be subject to termination for unpaid TLS charges. If Applicant begins offering service that distinguishes between local and TLS usage, it will offer TLS to its customers in accordance with §214 (e)(1)(B) of the 1996 Act, and state and FCC requirements.

Mr. Burt testified that Applicant will remain functional in emergency situations, as required by 47 C.F.R. §54.202(a)(2), using Sprint's network. Sprint has established a variety of internal programs dedicated to analyzing and responding to emergency situations. These programs ensure timely and effective deployment of Sprints services to allow the public and private sectors to function during emergencies. They also ensure that Applicant's services function. Sprint's network is monitored 24/7/365 by monitoring centers. Local switching offices  Staffed by trained technicians coordinate with larger operations centers to ensure that Sprint's networks are properly maintained and network performance is at expected levels. Each cell site in the Sprint network is equipped with battery back-up power.

Sprint can also reroute traffic around damaged facilities and manage traffic spikes resulting from emergencies. Many Sprint cell sites provide overlapping coverage for neighboring areas and such redundancy ensures that coverage continues in the event of damage to a facility. If a cell site fails, neighboring sites can be adjusted to cover a wider service area or Sprint could deploy additional network to remedy Applicant's service issues.

Mr. Burt testified that 47 C.F.R. §54.202(a)(3) provides that a wireless ETC's agreement to comply with the Cellular Telecommunications and Internet Association's Consumer Code ("CTIA Consumer Code") satisfies the FCC's consumer protection and service quality standards. Applicant has complied with the CTIA Consumer Code since its inception and annually certifies its compliance therewith.

Mr. Burt testified that 47 C.F.R. §54.201(h) requires ETC applicants to demonstrate that they have the technical and financial capacity to provide Lifeline

services. The FCC considers the applicant's prior service to non-Lifeline customers; whether the applicant relies exclusively upon Lifeline for revenue; the length of time applicant has been in business; whether it has outside revenue; and whether it has been the subject of any FCC enforcement actions or revocation proceedings.

He stated that Applicant has operated as a telecommunications carrier since 2002. It is experienced and financially stable, and will be able to provide Lifeline in accordance with FCC and the Commission's rules. It serves over seven million customers, including hundreds of thousands non-Lifeline customers in Illinois. (Exhibits 1.2 and 1.3 attached; conf.).

Applicant has also met the standards necessary for wireless ETC designation in 41 other jurisdictions and has over two million total Lifeline customers. (Exhibit 1.4 attached; conf.). Further, Applicant's managers have decades of telecommunications experience. Applicant has not been the subject of any formal state or FCC enforcement or revocation proceedings, it has never had to file for bankruptcy protection, and it is supported by the assets of Sprint. Applicant is not dependent upon Lifeline revenue, as that service provides a minority of its overall revenue and customer base.

Applicant's primary Lifeline plan in Illinois consists of 250 anytime prepaid minutes per month and unlimited text messages at no charge, after application of the \$9.25 Lifeline discount. The Lifeline service rate represents a pass-through of the full amount of Lifeline support to every qualifying customer. Customer enrolled in the 250-anytime minute plan can get an additional 250 anytime minutes for \$5.00 per month, after the discount. The same customers can get unlimited talk and unlimited web access for \$30.00 per month, after the discount. Customer can add minutes and data to their plans as needed through "Top Up" purchases at any store or over the Internet. Examples include additional minutes at \$0.10 each; Data Packs as low as \$5.00 for 5 MB; and 411 service at \$1.75 per call plus standard airtime charges.

Applicant's 250-anytime minute plan does not include international texts, picture messaging or voicemail. All service plans include free, 911-capable wireless handsets with a one-year manufacturer's warranty and the value-added features of a Voicemail Account, Caller-ID and Call Waiting. Customers are not required to pay any initial connection fees and all of its wireless minutes are "any distance", meaning there are no toll or long distance charges for calls placed in the US. Applicant also commits to reporting any rate changes for its Lifeline and will include a detailed description of the change.

Mr. Burt testified that Applicant commits to comply with Part 54 Subpart E and §§54.409 and 54.410. Applicant's Compliance Plan (Exhibit 1.5 attached) contains specific procedures implemented to comply with customer certification and verification requirements, as well as rules addressing de-enrollment and duplication of service. These procedures satisfy the Illinois Lifeline Eligibility Certification and Verification requirements. Applicant will also file annual reports in this Docket disclosing the number of subscribers de-enrolled for non-usage, in satisfaction of 47 C.F.R.

§54.405(e)(3). Applicant will also comply with the FCC's annual certification required by 47 C.F.R. §54.416 and the FCC's measures to address waste, fraud and abuse. Applicant will also participate in the federal National Lifeline Accountability Database ("NLAD") and Illinois-based Lifeline subscriber duplicate data databases. Applicant complies with FCC recordkeeping requirements of 47 C.F.R. §54.417 and will comply with Illinois requirements.

Mr. Burt testified that Applicant will comply with the reporting requirements of 47 C.F.R. §54.422(a) and (b). Applicant is also aware of the ETC provider audit occurring within the carrier's first twelve months of seeking federal low-income Universal Service Fund support, and it commits to filing in this Docket a copy of the audit report produced pursuant to 47 C.F.R. §54.420(b). Applicant is further aware of, and commits to comply with, the reporting requirements of Section 757.400(d) and 47 C.F.R. §54.420(a). It also complies with §54.422(b), requiring annual reports of network outages as defined in 47 C.F.R. §4.5.

Mr. Burt testified that Applicant, as a carrier seeking Lifeline-only ETC designation, is not required by 47 C.F.R. §54.202(a)(1)(ii) to submit a Five-Year Network Improvement Plan. He also testified that Applicant commits to meeting the additional Lifeline service requirements of Sections 757.400(c) and 757.425(b).<sup>1</sup>

Mr. Burt testified that Applicant's request for Lifeline-only ETC designation is in the public interest, as the Commission will be enhancing the 1996 Act's goal of ensuring universal access to quality telecommunications service at affordable rates. The FCC requires that a grant of ETC designation be based upon a finding that it will be in the public interest. When making that evaluation, the FCC considers the "benefits of increased consumer choice and the unique advantages and disadvantages of applicant's service offerings." Applicant's ETC designation will increase the number of Lifeline providers in Illinois and provide low-income consumers with access to its attractive and affordable service offerings.

Mr. Burt testified that Applicant's ETC designation will also provide eligible customers with low-price wireless options and high-quality service offerings. Low-income consumers often lack the choices available to other consumers. The primary purpose of universal service is to ensure that low-income consumers in particular have access to affordable and comparable telecommunications service, a vital economic resource leading to rising wage levels and personal safety.

Applicant's ETC designation will also promote competition in Illinois and will increase pressure on other carriers to target low-income consumers with offerings tailored to their needs. Since Applicant's calling plans are a "Best Offer" among major

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<sup>1</sup> Mr. Burt testified that Applicant also sought a waiver of 83 Ill. Adm. Code 736.115, 736.610, 736.620, 736.630, 736.640, 736.650, 736.660, 736.670, 736.685 and 736.690. (App. Ex. 1.0 at 25). His testimony was filed September 16, 2014, while amendments to the cited sections were pending in Docket 14-0076. The Commission adopted the proposed amendments on October 7, 2014 and each of the cited sections was repealed at 38 Ill. Reg. 21064, effective October 23, 2014.

Lifeline assistance plans, other carriers will have an incentive to improve existing service offerings and tailor their plans to appeal to low-income customers. Applicant's ETC designation will expand the availability of affordable telecom services to qualifying consumers, thereby lowering prices and increasing choice.

Applicant's success in each market it has entered, many of which contain the same Lifeline providers currently operating in Illinois, is a testament to the competitiveness of its Lifeline offering. Lifeline service, like other retail services, benefit from strong competitors in the market. Also, as with non-Lifeline service, customers may move between providers if a better deal is available or if they are dissatisfied with their current Lifeline provider.

Mr. Burt testified that Applicant's Lifeline customers will receive the same high-quality wireless service provided to all of its customers. As evidence of its commitment to high-quality service, Applicant annually certifies compliance with the CTIA Consumer Code, a practice which it will continue. Applicant has also received numerous awards for its high-quality service, including the J.D. Power award for providing "An Outstanding Customer Service Experience under its Certified Call Center Program.

#### B. Rebuttal Testimony of Mr. Burt

Mr. Burt testified that Applicant would remit all 911 and E911 fees in a timely manner, ~~except but that remittance for fees~~ on the base Lifeline offering is not required. It was his understanding that use of the base Lifeline offering does not meet the statutory definition of "consumers" or the statutory definition of a "retail transaction", as there is no purchase of a prepaid wireless telecommunications service.

Mr. Burt testified that Staff had stated that Applicant should, within 30 days of designation, request guidance/clarification from the Illinois Department of Revenue ("IDOR") whether it is required to remit surcharges pursuant to the Prepaid Wireless 911 Surcharge Act ("PW9SA"). (Staff Ex. 1.0 at 35). Applicant is committed to paying applicable fees on a non-discriminatory basis. Staff's condition could have the effect of requiring Applicant to remit fees that its competitors do not. As there is no way to bill customers receiving free service on the baseline offering, Applicant would have to remit the fees from federal reimbursement amount, i.e., pay the fee itself instead of collecting it from its subscribers. Applicant will agree to pay the E911 fees on its base Lifeline offering if IDOR determines that the fees are applicable and a reviewing court affirms that determination.

Mr. Burt further testified that Virgin Mobile seeks designation in the geographic areas in every rural and non-rural incumbent local exchange carrier exchange area where Sprint (Virgin Mobile's parent company) provides wireless coverage in Illinois. Attached to Mr. Burt's Rebuttal Testimony, as Exhibit 2.1, is a list of complete and partial exchanges for which Virgin Mobile proposes to serve and, attached as Exhibit 2.2, are maps of the fully and partially served exchanges that comprise Virgin Mobile's proposed ETC service area.



Mr. Burt testified that Applicant agrees to be bound by all of the other conditions contained in Staff's Summary of Findings and Recommendations. (Staff Ex. 1.0 at 36-38).

### III. Staff Position

#### A. Direct Testimony of Dr. Zolnierrek

##### I. Introduction and Summary

Dr. Zolnierrek testified that Applicant seeks designation as a wireless ETC for the purpose of receiving Lifeline support from the federal universal service fund. He recommended that the Commission grant ETC designation, subject to the conditions described herein.

##### II. Standards and Requirements for ETC Designation

Dr. Zolnierrek testified that, pursuant to §214(e)(2), state commissions are assigned the task of designating carriers as eligible to receive USF support. Supported services are defined in §54.101(a) as voice telephony services that “provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers...” ETCs are required by §54.101(b) to offer voice telephony services to receive USF support.

Sections 214(e)(1) and 214(e)(2), include statutory requirements that carriers must meet in order to be designated as ETCs. These sections also contain statutory requirements that state commissions must follow in designating carriers as ETCs. These provisions make clear that satisfying the requirements of §214(e)(1) is a necessary condition, but is not by itself sufficient for ETC designation. Carriers must satisfy FCC requirements for designation under §214(e)(2), and all other requirements the Commission deems appropriate to ensure that designation is consistent with the public interest, convenience, and necessity.

Dr. Zolnierrek testified that how a service area is determined is contained in §214(e)(5). For areas served by non-rural carriers, a service area is the geographic area established by the Commission. For areas served by rural carriers, the service area is the telephone company’s study area, unless redefined by the FCC and the Commission. Recently, the FCC found that the rural study area conformance requirement is unnecessary for Lifeline-only ETCs and granted forbearance. The FCC eliminated the distinction between rural and non-rural areas in defining service areas for Lifeline-only ETCs. A carrier seeking Lifeline-only designation in part of a rural telephone company’s service area no longer needs to seek redefinition of the service area. This forbearance does not apply to carriers seeking ETC designation for the purpose of receiving high cost support.

Dr. Zolnierrek testified that where carriers seeking ETC designation are not subject to the jurisdiction of state commissions, the FCC is required by §214(e)(6) to perform the designation. The two general types of requirements the FCC imposes upon carriers seeking ETC designation are (1) requirements imposed on carriers when the FCC performs the designation and (2) requirements imposed on all carriers whether designation is from the FCC or a state commission.

The FCC's requirements for its own evaluations are contained in §54.202 and its ETC Orders,<sup>2</sup> however these requirements and the determinations the FCC makes under §214(e)(6) are not binding on state commissions. In addition to the requirements the FCC has established for its own ETC designation under §214(e)(6), it has prescribed requirements that all ETCs must meet and that all state commissions must follow when designating ETCs. A state commission is required to make a determination under §54.201(c) and §214(e)(2), that it is in the public interest to designate an applicant as an ETC. States are otherwise encouraged to apply the eligibility requirements of §54.202(a)-(b), however these provisions are not binding.

The FCC prescribed the framework for determining technical and financial capability in §54.201(h). These are among the relevant considerations, but state commissions may introduce others that it deems reasonable and appropriate.

Dr. Zolnierrek testified that the FCC placed the burden on the applicant to prove that ETC designation is in the public interest. (ETC Order at ¶44). It is the applicant that possesses the necessary information to make a determination of designation. From a purely practicable point of view, it is the only way to ensure that all ETC requirements, including public interest benefits, are met.

With regard to multiple ETC designations in an area, the FCC observed that differential criteria may be appropriate, depending upon the number of ETCs in an area. If the per-line support level is high enough, the state may be justified in limiting the number of ETCs in a study area, because funding multiple ETCs could impose strains on the universal service fund. (ETC Order at ¶55).

Commission rules applicable to ETCs are contained in 83 Ill. Adm. Code 736 (Consumer Protection and Service Quality Standards) and 83 Ill. Adm. Code 757 (Telephone Assistance Programs). In addition, the Commission has imposed upon ETCs on a case-by-case basis, conditions that ensure that designation meets the statutory requirements and is consistent with the public interest.

Dr. Zolnierrek stated that the Commission should not impose the same standards on Applicant that it has imposed on past ETC applicants, as a technical and financial capability analysis under §54.201(h) is now required. This mandates use of a different standard than was previously employed. Also, due to the potential for waste, fraud and abuse in the low-income program, state commissions should subject ETC applicants to

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<sup>2</sup> In the Matter of Federal-State Joint Bd. On Universal Service, 2005 WL 646635 (FCC 05-46, ¶28 (Apr. 21, 2005 ("ETC Order").

a rigorous analysis to ensure that they are capable of providing quality service in compliance with all applicable laws. The Commission should not decline to analyze an applicant or impose conditions, merely because it did not do so in prior Dockets.

ETC designation should be based upon the benefits such designation provides. If a low-income customer has several prepaid wireless options and a new entrant does not provide new or better options, or lower priced service, the customer may be no better off than without the options offered by the new entrant. This is particularly so if the new entrant increases the potential for waste, fraud and abuse, or if it unnecessarily burdens the fund. The Commission should perform assessments based upon the circumstances presented by each applicant, which can change with each applicant. The Commission should strive for uniformity in its assessments, where such uniformity does not subvert ETC requirements.

Dr. Zolnierrek testified that the Commission determined in Docket 97-0507 that the service area or minimum geographic area that Ameritech Illinois, a non-rural carrier, must serve to be designated as an ETC, is an exchange. The Commission should make the same finding in this Docket. While the Commission has in the past relied upon both exchange-based and non-exchange-based definitions, there are advantages to defining an ETC service area as an exchange, as opposed to a wire center or a ZIP Code.

Exchanges constitute an industry-standard geographic unit upon which all carriers rely. Furthermore, the Commission retains control over exchange boundaries and proposed changes to those boundaries. An ILEC wire center is defined by the reach of the ILEC's switch. It is both ILEC-specific and subject to change without notice to, or approval by, the Commission. ZIP Codes are assigned by the U.S. Postal Service ("USPS") and Zip Code boundaries are subject to change, based upon the USPS' operating needs without notice to, or approval by, the Commission.

Identifying a service area in terms of an exchange allows the Commission to assess that the area is defined in compliance with §214(e)(5). The Commission should require carriers to provide a list of the exchanges within its service area. The Commission should also require the carrier to provide evidence that it can provide service over its own facilities to all portions of the exchanges in the proposed service area. If the carrier is a reseller, it should provide evidence that its underlying carrier has contracted, and is able, to provide the carrier service in all portions of the identified exchanges. Since a carrier is required to provide supported services over its own facilities, in whole or in part, it should produce coverage information regarding facilities it owns and information on how, in conjunction with its own facilities, use other services to provide service.

The FCC's grant of forbearance from the "own-facilities" requirement for reselling carriers was conditioned upon the carrier's compliance with certain 9-1-1 requirements and evidence that it has an approved FCC Compliance Plan. A reseller should also produce information on the wholesale services that it will resell that shows where it is

capable of providing the service. The Commission should further require carrier's to provide information regarding what forms of advertising it will rely upon throughout the designated service area.

The following requirements established by the FCC for its own ETC designation under §214(e)(6), should be imposed on a carrier under §214(e)(2): (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy applicable consumer protection and service quality standards; and (4) submit information describing in detail the terms and conditions of any voice telephony plans to subscribers.

Also, the FCC required that ETCs designated under §214(e)(6) meet the reporting requirements of §54.422(b), regarding a carriers ability to remain functional and maintain service quality. The FCC further requires the carriers it designates to file annual reports showing the number of subscribers de-enrolled for non-usage, annual outage and general quality of service information. The same requirements should be included among those used by the Commission in evaluating ETC applications.

State commissions are mandated pursuant to §54.403(a)(1) to require ETCs providing Lifeline service to pass through the full amount of support to the qualifying low-income consumer. The carrier should be required to demonstrate that its Lifeline rate represents a dollar-for-dollar reduction from its non-Lifeline rate, and that it has passed through the full amount of support to the customer.

Pursuant to §54.201(h) and §54.202, a carrier seeking Lifeline-only ETC designation must demonstrate that it is financially and technically capable of providing the service in compliance with all low-income program rules. State commissions are explicitly prohibited from granting such designation until the applicant has made the necessary showing. In establishing these new conditions in the Lifeline Reform Order ("LRO"), the FCC cited the growth in the number of ETCs, as well as the Indiana Utility Regulatory Commission's observation that "companies that have made a business case to serve a certain market in a state prior to receiving Lifeline subsidies may be less inclined to risk being cited for non-compliance with the program." (LRO at ¶387).

The FCC also cited T-Mobile's assertion that "Lifeline ETC applicants should be required to make showings of financial and technical capability to provide the supported services (including consideration of whether the carrier offers services in addition to Lifeline service) in order to be designated as Lifeline ETCs" to ensure that the service is provided by carriers with sufficient incentive to comply with applicable rules. (LRO at ¶388). This requirement was intended to strengthen protections against waste, fraud and abuse by filtering out carriers who have not made a sufficient business case and are more likely to commit such acts.

The Commission should evaluate Applicant's financial statements to determine financial capability. Applicant must demonstrate that it has experience in legitimately

and profitably providing service. Since market conditions and other factors vary across state lines, Dr. Zolnierrek recommended that Applicant demonstrate a record of service in Illinois based upon no less than six months of providing non-Lifeline service in Illinois, of the same type it plans to provide Lifeline service. If Applicant has no service record in Illinois, it may rely on its record of comparable services outside Illinois. Applicant should provide evidence that it has a business case to serve such markets, making it less likely to be cited for program non-compliance.

Applicant should also demonstrate that, in states where it is providing Lifeline service, that the fraction of non-Lifeline wireless customers to the total of Lifeline and non-Lifeline wireless customers has not fallen below 20% in each state in each month in the period beginning six months prior to submission of the application. If Applicant's record of service is insufficient, ETC designation should be denied until such time as Applicant demonstrates an ability to serve the Illinois market without substantially relying on Lifeline subsidies. In this Docket, the Commission should determine that Applicant cannot begin to provide Lifeline service until it has established a record of providing non-Lifeline service, has supplemented this record to reflect this service period, and has received specific approval from the Commission to begin Lifeline service.

In order to assure that the ETC does not default to a business plan that relies primarily on Lifeline service, Dr. Zolnierrek recommended that the Commission require the carrier to provide the same service to Lifeline customers that it provides to non-Lifeline customers in Illinois. If the fraction of non-Lifeline wireless customers to the total of Lifeline and non-Lifeline wireless customers falls below 20% for any three consecutive months, the Commission should require Applicant to cease enrolling new customers in its wireless Lifeline program and not resume enrollments until it obtains Commission approval.

These criteria will provide some assurance that Applicant will have the financial ability to provide wireless service in Illinois without critically relying upon Lifeline receipts and will, therefore, be less inclined to engage in waste, fraud and abuse to remain solvent.

The Commission should also review the background and experience of Applicant's personnel. Applicant should not have had any enforcement actions or ETC revocation proceedings in any state. If such actions did take place, Applicant should produce documentation to show that it has remedied any compliance failings, and that it has been in compliance for at least six months prior to submission of its ETC application. Applicant should also demonstrate that it has the ability to comply with FCC and Commission statutes and regulations.

The importance of the E911 system and its funding cannot be overstated. From a public policy perspective, all carriers that provide E911-capable handsets are obligated to pay their share of these costs. Carriers who do not pay, or do not pay their full share, increase profits at the expense of the E911 system and the public interest.

An applicant should demonstrate that it will comply with E911 surcharge obligations by showing how much it has, and/or expects to contribute, per customer per month in E911 surcharges for its Lifeline customers. Section 17 of the Wireless Emergency Telephone Safety Act (50 ILCS 751) (“WETSA”) requires each carrier to impose and remit a wireless E911 surcharge, and requires the Commission to administer collection of this sum. Carriers providing wireless service on a subscription basis pay \$0.73 per subscriber, per month.

The Prepaid Wireless 9-1-1 Surcharge Act (50 ILCS 753) (“PW9SA”) was enacted to ensure that funding for the wireless emergency system is maintained with equitable contributions from customers of prepaid wireless services, and not relying solely on contributions from customers of wireless service on subscription plans. The PW9SA imposes on sellers of prepaid wireless service the duty to collect the surcharges from buyers at the point of sale, and requires the Illinois Department of Revenue to administer collection of the sum. The PW9SA surcharge amount is 7% of the retail transaction if the point of sale is in Chicago and 1.5% if the point of sale is elsewhere.

The Commission should require carriers to submit, within 30 days after the end of each calendar quarter the following information: for any wireless carrier remitting a wireless E911 surcharge pursuant to WETSA, the total dollar value of wireless E911 surcharges with respect to its Lifeline customers remitted for the quarter. For any wireless carrier remitting a wireless E911 surcharge pursuant to PW9SA, it should report the total dollar value of wireless E911 surcharges with respect to its Lifeline customers remitted for the quarter.

To further strengthen protections against waste, fraud and abuse, the FCC requires all ETCs to comply with the National Lifeline Accountability Database procedures enumerated in §54.404(b) for detection and prevention of duplicative support, marketing, disclosure and de-enrollment requirements of §54.405, subscriber eligibility determination/certification and annual recertification requirements of §54.410, annual carrier certification requirements of §54.416, recordkeeping requirements of §54.417, audit requirements of §54.420, and carrier annual reporting requirements of §54.422(a).

Lifeline ETCs must comply with Section 736, Consumer Protection and Service Quality Standards. These regulations establish the service quality and customer protection standards with which all ETCs must comply, including compliance with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service.

ETCs must also comply with the requirements of Section 757, Telephone Assistance Programs. This section requires ETCs to, among other things, regularly report to the Commission information on the number of Lifeline customers served.

Section 214(e)(2) requires the Commission to find that ETC designation is in the public interest convenience and necessity before granting such designation. Neither the 1996 Telecom Act nor the FCC defined these terms or specified the criteria to be applied to a public interest analysis. The Commission then has broad discretion to determine the specific factors to be considered in a public interest analysis. The benefits resulting from designation are those currently unavailable to customers, but will become available upon designation.

Designation is also not without cost implications. Unless there is a reasonable certainty that an additional wireless Lifeline ETC will not inadvertently or deliberately commit waste, fraud and abuse, the additional designation will increase the likelihood of these problems occurring in the low-income program. Also, the Commission's resources required to ensure compliance will increase with each additional designation. Unconstrained growth of the program will also jeopardize universal service by increasing the contribution burden on consumers and business, thereby discouraging adoption and use of communication services.

Strengthening protections and constraining the growth of the program to ensure it remains viable are among the primary objectives of the FCC's efforts to comprehensively reform the low-income program. Accordingly, the Commission should not designate a carrier as a wireless Lifeline ETC unless the carrier has shown that designation will produce significant benefits that are currently available, but will become available upon designation. A showing that a Lifeline offering represents a meaningful increase in consumer choice and would therefore result in benefits of such choice necessarily entails that the Lifeline offering is, from a consumer's view, substantively different from offerings currently on the market, including traditional and non-traditional offerings, and there is a reasonable expectation of nontrivial demand for wireless Lifeline offerings.

As the Commission is assigned the task of determining carrier fitness for ETC designation, it is the "gatekeeper" in Illinois. It should require carriers to submit, within 30 days after the end of each calendar quarter, a Wireless Customer Report providing by month the number of wireless customers; the number of wireless non-Lifeline customers, the number of wireless Lifeline customers; and the wireless non-Lifeline fraction of wireless customers.

### III. Virgin Mobile's Application for Wireless Lifeline ETC Designation

[Dr. Zolnierrek further testified that](#) Applicant offers service using the network of its parent company, Sprint. The FCC has found that it owns Sprint Nextel's facilities for the purpose of satisfying the facilities requirement of §214(e) of the 1996 Telecom Act. Applicant asserts that it has the ability to use these facilities to provide supported services throughout its proposed designated area and will commit to accommodate any potential customer's request for service provide service in areas where signal strength is weak or absent.



Applicant provided both a list of wire centers and exchanges to define its proposed service area. Dr. Zolnierrek recommended that the Commission define Applicant's service area based upon the exchanges.

Applicant also commits to advertising the availability and rates for Lifeline service in newspapers, radio and television, through direct and shared mail campaigns, and through brochures and posters distributed at various state and local social service agencies.

Applicant commits to meet the service quality requirements of Section 736, to the extent that these regulations are applicable to a prepaid wireless provider.<sup>3</sup> These regulations apply to all wireless ETCs offering either competitive or non-competitive telecommunications services as defined in Sections 13-209 and 13-210 of the Public Utilities Act. (220 ILCS 5/13-209, 5/13-210). No exception is made for wireless prepaid carriers.

Applicant will pass through the full amount of support to which Lifeline customers are entitled. Applicant fulfills the financial and technical capability requirements, having provided prepaid wireless service to hundreds of thousands of customers in Illinois for years when it was not designated as an ETC. Furthermore, Applicant has produced evidence that is not critically dependent upon Lifeline revenue in states where it has ETC designation, including form 10Q for the quarter ended June 30, 2014 and its parent company's form 10K for the year ended December 31, 2013. Other evidence is also available.

Dr. Zolnierrek also testified that Applicant will not remit wireless E911 surcharges for its Lifeline customers, stating that customers receiving only the primary Lifeline package in Illinois do not meet the statutory definition of customers and the reimbursements do not meet the definition of retail transactions. Dr. Zolnierrek testified that, as failure to remit the surcharges will affect funding for the E911 system, Applicant should, within 30 days of designation, request guidance/clarification from the Illinois Department of Revenue whether it is required to remit the surcharges pursuant to PW9SA for its primary Lifeline service package. Applicant should report to the Commission any clarification obtained within five days of receipt.

Applicant has further provided evidence that its proposed Lifeline plan differs from those of other carriers, due to the amount of texts provided. Applicant's plan with regard to voice minutes is comparable to other carriers' plans, but some other plans offer more free minutes. Applicant has not established that its offering is a substantively distinct from other plans. However, Applicant has established itself as a provider of non-Lifeline wireless service and this reduces the concern that it will critically rely on Lifeline service for revenue and engage in waste, fraud and abuse of the program. It also suggests that Applicant will provide customers an option to obtain Lifeline from a proven wireless carrier and this is consistent with the public interest, convenience and necessity.

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<sup>3</sup> With regard to Section 736 waivers, see page 7, fnnt 1, above.

Dr. Zolnierrek's testimony recommends that The Commission should designate Applicant as a wireless ETC, subject to the following conditions:

1. Applicant should comply with all applicable federal and state statutes and rules affecting Lifeline ETC status and obligations;
2. Applicant should comply with all commitments made in its petition;
3. Applicant should comply with the commitments included in its FCC-approved compliance plan;
4. Applicant should, within 30 days of designation, request guidance/clarification from the Illinois Department of Revenue regarding whether it is required to remit surcharges pursuant to PW9SA with respect to Lifeline customers subscribing to Applicant's primary Lifeline service package. Applicant should report any guidance/clarification received in response to this request, within this Docket, within five days of receipt of such guidance/clarification. Applicant should comply with any such guidance/clarification.
5. Applicant's designated ETC service should include those exchanges identified in Exhibit B-2 attached to its application;
6. Applicant should report, within this Docket, all denials of Lifeline service requests from eligible customers in its designated ETC service area within thirty (30) days of such denial. The report should include the date of the denial and the reason for the denial.
7. Applicant should report, within this Docket, any changes in rates for its Lifeline offerings in Illinois. The report should include a description of the rate change.
8. Applicant should file, as reports within this Docket on the dates it files such reports with the FCC, copies of any and all annual reports showing the number of subscribers de-enrolled for non-usage that it files with the FCC pursuant to 47 C.F.R. §54.405(e)(3);
9. Applicant should file, as reports within this Docket on the dates it files such reports with the FCC, copies of any and all annual outage and general quality of service information that it files with the FCC pursuant to 47 C.F.R. §54.422(b);
10. Applicant should file, as reports within this Docket on the dates it files such reports with the FCC, a copy of any and all audit reports filed with the FCC pursuant to 47 C.F.R. §54.420(b);
11. Applicant should report, within this Docket, on a quarterly basis and within 30 days after the end of each calendar quarter, by month: (a) the number of Illinois wireless customers; (b) the number of Illinois wireless non-Lifeline customers; (c) the number of Illinois wireless Lifeline customers; and (d) the Illinois wireless non-Lifeline fraction;
12. Applicant should report, within this Docket, on a quarterly basis and within 30 days after the end of each calendar quarter, by month, the total dollar value of wireless E911 surcharges with respect to its Lifeline customers remitted for the quarter pursuant to WETSA; and

—Applicant should report, within this Docket, on a quarterly basis and within 30 days after the end of each calendar quarter, by month, the total dollar value of wireless E911 surcharges with respect to its Lifeline customers remitted for the quarter pursuant to PW9SA.

~~12.~~

## B. Staff Rebuttal Testimony

Dr. Zolnierrek testified that, since IDOR administers collection of 911 surcharges pursuant to PW9SA, it has the ability to implement and enforce the statute. It is IDOR's interpretation that is relevant to the question whether the use of base Lifeline offerings does not meet the statutory definition of "consumers" or "retail transaction", because there is no purchase of prepaid wireless telecommunications service.

Dr. Zolnierrek stated that Mr. Burt asserts without evidence that other Lifeline providers do not remit 911 fees, and Dr. Zolnierrek did not know whether other Lifeline providers did not remit these fees to IDOR. He did know that American Broadband and Telecommunications Company had committed to remit E911 surcharges. Dr. Zolnierrek testified that his position on this issue had not changed.

Following the exchange of testimony, Staff indicated in its Initial Brief that "Virgin Mobile proposes a customer service area definition that does not follow either exchanges or wire centers, but rather is defined by the contours of the Sprint network coverage area." (Staff IB, 17). However, Staff concludes that Virgin Mobile has provided an example of how a customer can determine, based upon his/her address and the information provided in this proceeding by Virgin Mobile, whether or not the customer's home is within the Virgin Mobile ETC service area. "Therefore, based upon the evidence presented by Virgin Mobile, Staff recommends the Commission find that Virgin Mobile has adequately and appropriately defined its proposed ETC service area." (Id.).

## IV. Commission Analysis and Conclusions

Applicant seeks designation as a wireless ETC to provide low-cost, Lifeline support to customers in rural and non-rural service areas in Illinois. As the Applicant, it bears the burden of proof to establish that it meets Commission and FCC requirements for such designation.

The Commission agrees with Staff that the minimum geographic area that Applicant must serve for ETC designation is normally an exchange, as listed in Exhibit B-2 attached to the application and Virgin Mobile Exhibit 2.1. Staff effectively stated that exchanges constitute standard industry geographic units on which all carriers, not just ILECs, rely. Telephone number blocks are assigned to carriers of all types by exchange. Also, the Commission retains control over exchange boundaries and over proposed changes to such boundaries. An ILEC wire center is an area defined by the reach of an ILEC's switch. It is ILEC-specific and subject to change without notice to the Commission notice or its approval.

ZIP codes are assigned by the US Postal Service and the area boundaries are also subject to change without notice to the Commission or its approval. The Commission further agrees with Staff that defining a service area by exchange offers the Commission greater certainty regarding the actual geographic area included in the service area. It also gives the Commission control over any proposed changes and

allows it to assess that the area defined is in compliance with §241(e)(5) of the Act. (Staff Ex. 1.0 at 13-14). Here, however, the Applicant has demonstrated how a customer can determine, based upon his/her address and the information provided in this proceeding by Virgin Mobile, whether or not the customer's home is within the Virgin Mobile ETC service area. Therefore, the Commission adopts Staff's recommendation and designates the Applicant's ETC service area as the contours of the Sprint network coverage area as identified in Virgin Mobile 2.1 and 2.2.

The Commission also finds that Applicant will also be able to offer supported services throughout its designated ETC service area. Applicant owns the facilities of Sprint Nextel for purposes of satisfying the own-facilities requirement of §214(e) of the Act.

Applicant further commits to advertising the availability and rates for its Lifeline service, using newspapers, television, radio, direct and shared mail campaigns, and brochures and posters distributed at various local social service agencies.

Applicant commits to complying with Section 736 Consumer Protection and Service Quality standards, to the extent applicable. Footnote 1, Page 7 contains a list of Section 736 subsections that were repealed in October 2014.

Applicant's evidence shows that it will pass through the full amount of support to which Lifeline customers are entitled. (Staff Ex. 1.0, Attachment A at 2).

Applicant has provided evidence that it has the technical and financial capability to provide Lifeline service in Illinois. Applicant has provided prepaid wireless service to thousands of prepaid wireless subscribers for multiple years. (Id., Attachment A at 5). Applicant also provided to Staff Sprint Corporation's SEC 10-Q for the quarter ended June 30, 2014, and its SEC 10-K for the year ended December 31, 2014. The Commission has no concerns that Applicant can provide the proposed Lifeline service without critical reliance upon subsidies.

The Commission finds that Applicant has provided evidence that the texts it proposes to offer differentiates its Lifeline plan from those of other providers. (Id., Attachment A at 15). Further, Applicant is an established provider of non-Lifeline wireless service and this reduces the concern that it will critically rely upon Lifeline subsidies and succumb to incentives to engage in waste, fraud and abuse of the program. Designating Applicant as an ETC will provide customers with the option to take Lifeline service from a proven wireless provider. Adding Applicant's offerings to the choices available to consumers already have is consistent with the public interest, convenience and necessity.

#### Condition #4

Staff also proposed that Applicant meet 13 specific conditions as a requirement of ETC designation. (Staff Ex. 1.0 at 36-38). Applicant agreed to 12 of the conditions,

but objected to Condition #4, which states that Applicant should seek guidance/clarification from the Illinois Department of Revenue within 30 days of designation regarding whether it is required to remit surcharges pursuant to the PW9SA for Lifeline customers subscribing to its primary service package. According to the terms of Condition #4, Applicant should report any guidance/clarification in response to its request within five days of receipt of such guidance/clarification, and it should also comply with such guidance/clarification.

In objecting to Condition #4, Applicant argued mainly that it offers its primary Lifeline service package to customers at no cost, therefore there is no purchase, no sale, no consumer, and no retail transaction upon which to base imposition of the surcharge. (App. IB at 12-13).

The PW9SA does not define purchase or sale, however Applicant argues that it defines “consumer” as “a person who purchases prepaid wireless telecommunications service in a retail transaction.” “Retail transaction is defined as “the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale” and “seller” is defined as “a person who sells prepaid wireless telecommunications service to another person.” (50 ILCS 753/10). (App. IB at 12). Applicant also stated that the definition of purchase is “to buy (property, goods, etc.); to get (something) by paying money for it.” (<http://www.merriam-webster.com/dictionary/purchase>) (*Id.*).

Staff points out that the subsidy belongs to the customer, not Applicant. The customer uses the subsidy to purchase the prepaid wireless telecommunications service which, in this Docket, is Lifeline service. Regardless of the fact that the subsidy goes directly to the ETC, it does so on behalf of the customer and at the customer’s direction. It is strictly within the customer’s discretion where to spend the subsidy. Staff argues that Applicant’s contention that there is no buyer, seller or consumer, is based upon the false premise that there is no customer buying the Lifeline service. The subsidy is the entitlement used by the customer to buy Applicant’s prepaid wireless Lifeline service. (Staff RB at 6).

The Commission agrees with ~~Staff~~the Applicant. Since no “retail transaction” occurs with a no charge Lifeline customer and the fee cannot be imposed upon a “consumer” as required by the PW9SA, we see no need for Applicant to seek the opinion of the IDOR regarding the applicability of the fee. Moreover, the condition proposed by Staff could have the effect of treating the Applicant differently than other Lifeline providers in Illinois. It would be unfair for the Applicant to remit fees if its competitors in the Lifeline market in Illinois do not do so. Since there is no way to bill consumers receiving free service on the baseline offering, then the Applicant would have to remit E911 fees from the federal reimbursement amount. In other words, the Applicant would have to pay the fees itself rather than collecting the fees from its subscribers. ~~By the definitions cited by Applicant, there is a purchase by, and a sale to, a customer of prepaid wireless Lifeline service. Applicant’s argument, that collecting the surcharge on Applicant’s no-charge base Lifeline offering is not required under current Illinois law because under the base plan, customers pay nothing for their handsets or~~

~~services, acknowledges that customers will receive services. (App. IB at 12). Even though no currency passes directly between the parties in the traditional sense, the Commission finds that there is undeniably a purchase and sale of prepaid wireless Lifeline service between Applicant and a customer, and that this constitutes a retail transaction. For that reason, Applicant is required by PW9SA to collect the surcharge from its prepaid wireless Lifeline customers. (50 ILCS 753/15)~~

Applicant also argued that the Commission does not have jurisdiction to compel Applicant to seek a ruling from IDOR, stating that the Commission's power is derived from statute and it may not, on its own, extend its jurisdiction. Also, it may not direct Applicant to initiate a separate legal proceeding with IDOR to resolve this issue. Further, the PW9SA does not confer any authority upon the Commission, as the administration of 911 and E911 surcharges lies exclusively with IDOR, which Staff acknowledges. (App. IB at 7-8; Staff Ex. 2.0 at 7).

Applicant also argued that the requirement that it seek guidance from IDOR is an unprecedented condition for ETC designation. It is apparent from the evidence that Staff is uncertain whether the PW9SA surcharges apply to Lifeline, so it attempts to induce Applicant to bear the cost in both time and money to resolve the issue. (App. IB at 9).

Staff argued that Applicant is incorrect, stating that "(C)arriers must meet all requirements the Commission deems appropriate and reasonable to ensure that an ETC designation is consistent with the public interest, convenience and necessity." Staff added that it is the Commission's duty to ensure that ETC designation is consistent with the public interest, convenience and necessity. (Staff RB at 3-4).

The Commission ~~dis~~agrees with Applicant. The Commission does not have jurisdiction to compel Applicant to seek a ruling from IDOR. In numerous prior ETC Dockets for both Lifeline and non-Lifeline service, the Commission has imposed a myriad of commitments and conditions designed to facilitate customer service and to protect the Lifeline program against waste, fraud and abuse.<sup>4</sup> The imposition of a condition in this Docket requiring Applicant to seek guidance/clarification from IDOR regarding collection of the surcharge, is ~~just as valid as~~ beyond the scope of any of the conditions previously imposed in prior ETC Dockets. ~~This same issue could recur in subsequent ETC Dockets and an opinion or ruling from IDOR in this matter could well provide the Commission with necessary guidance in such future proceedings. Moreover, by virtue of its referral of this issue to IDOR, the Commission is deferring to IDOR's jurisdiction.~~

Applicant also argued that the PW9SA makes clear that the Commission has no authority to interpret or administer a carrier's collection of surcharges. Such authority rests with IDOR. (App. IB at 8). Staff argues that this is incorrect, insofar as the

<sup>4</sup> See e.g., Commission Dockets 09-0269, 09-0605, 10-0452, 10-0453, 10-0512, 10-0524, 11-0073, 12-0680 (commitments and conditions contained in an attached Agreed Joint Stipulation).



Commission is required to determine the veracity of Applicant's commitments to comply with applicable laws and regulations in deciding whether to grant ETC designation.

The Commission does not view the issue as whether it has the authority to interpret or administer carrier's remittance of surcharges. The issue is whether Applicant will fulfill its commitment to pay all applicable 911 and E911 fees in a timely manner, as it has pledged to do. (App. Ex. 1.0 at 14). ~~This is the basis for the Commission's proposal to refer Applicant to IDOR to obtain the necessary guidance/clarification on the matter of collecting the surcharge for its primary Lifeline package.~~

~~Also, since Applicant affirmatively states that the Commission has the authority to grant ETC designation (Application at 8), it stands to reason that the Commission also has the authority to impose, within reason, whatever conditions it deems necessary to ensure that Applicant is in full compliance with all applicable statutes, rules and regulations pertaining to ETC designation. Proposing that Applicant seek guidance/clarification from IDOR on the issue of collecting E911 surcharges does not appear to the Commission to be unreasonable. The matter is at issue, it needs to be resolved, and IDOR is the proper agency to render an opinion.~~

Applicant also argued that the PW9SA does not require the E911 fee to be remitted if only "a minimal amount of prepaid wireless...service is sold with a prepaid wireless device for a single, non-itemized price..." The minimal amount is ten minutes or less or \$5.00 or less. (50 ILCS 753/15(f)). Applicant's basic Lifeline plan would allow it to choose not to collect the surcharge, since free-of-charge is less than \$5.00.

~~—The Commission is not persuaded~~takes no position with respect to this argument. ~~Applicant states that it will offer certain numbers of minutes and unlimited text messages at no charge after application of the \$9.25 discount. Customers, however, can purchase additional minutes/texts in various packages for sums well in excess of \$5.00, or can they can purchase additional minutes/texts as needed, which could also easily exceed \$5.00. (App. Ex. 1.0 at 19-21). Under these circumstances, Applicant's Lifeline service would no longer be free-of-charge. The Commission does not strain credulity to suggest that, in all likelihood, at least some customers will avail themselves of the additional offerings. At that point there will clearly be a purchase, a sale, and a retail transaction very possibly in excess of \$5.00, which would trigger the surcharge provisions of the PW9SA. (50 ILCS 753/15). The Commission considers this to be as compelling a reason as any for Applicant to seek guidance/clarification from IDOR regarding collection of the surcharge.~~

Applicant argues that Condition #4 would also have the effect of treating Applicant different than other Lifeline providers, because it would compel Applicant to expend private resources to initiate an IDOR proceeding. It could also possibly require Applicant to remit an E911 fee not required of its competitors. Staff identified only a single instance, Docket 12-0680, in which American Broadband and Telecommunications Company voluntarily stipulated that it would remit applicable E911



surcharges to receive ETC designation. The Commission has not otherwise determined that the surcharge requirement of the PW9SA applies to Lifeline service.

Staff argued that the importance of the E911 system to the preservation of public health and safety cannot be overstated, and funding is therefore crucial. All carriers that provide E911 service are obligated to pay their respective share. A carrier who does not pay its fair share increases its profitability at the expense of the system and the public health and safety.

Applicant's concerns are ~~unfounded and premature~~ noted but are moot because the Commission does not have jurisdiction to compel Applicant to seek a ruling from IDOR. ~~There is nothing in the language of Condition #4 that either states or implies that Applicant will have to expend any sums to initiate an IDOR proceeding, or that a proceeding would even be necessary. Staff states only that Applicant should request guidance/clarification from IDOR on the issue of surcharge collection. Assuming that IDOR agrees to render an opinion, or even a ruling, either could come in a form as simple as a letter.~~

Furthermore, since there is no opinion or ruling from IDOR at this point, Applicant cannot be said to have been exclusively required to collect the E911 surcharge.

Commission finds that Applicant should comply with the ~~thirteen~~ twelve conditions proposed by Staff (Nos. 1-3, 5-13), as set forth in Staff Ex. 1.0 at 36-38 and listed in this Order at 16-17. The Commission also finds that Applicant has thereby met its burden to establish that its designation as an ETC is in the public interest.

#### V. Findings and Ordering Paragraphs

Having reviewed the entire record herein and being fully advised in the premises, the Commission is of the opinion and finds that:

- (1) Virgin Mobile USA, L.P. filed an application on July 23, 2014, requesting designation as an Eligible Telecommunications Carrier to provide wireless Lifeline service in the rural and non-rural areas where Sprint Corporation provides wireless coverage in Illinois;
- (2) Applicant was previously certificated by the Commission in Docket 12-0027 to provide Commercial Mobile Radio Service in Illinois;
- (3) the Commission has jurisdiction of the parties and of the subject matter herein;
- (4) the Commission finds that Applicant has made the necessary showing that a grant wireless ETC Lifeline designation would be in the public interest;

(5) as a requirement of ETC designation, Applicant should comply with the ~~thirteen~~ twelve (12~~3~~) conditions proposed by Staff in Ex. 1.0 at 36-38 (Nos. 1-3, 5-13), and listed in this Order at 16-17;

(6) the application should be granted.

IT IS THEREFORE ORDERED that Virgin Mobile USA, L.P. is hereby designated as a wireless Eligible Telecommunications Carrier, effective as of the date of this Order, for the purpose of receiving federal low-income universal service Lifeline support in the rural and non-rural areas where Sprint Corporation provides wireless coverage in Illinois.

IT IS FURTHER ORDERED that Applicant shall comply with the ~~thirteen~~ twelve (12~~3~~) conditions proposed by Staff in Ex. 1.0 at 36-38, and listed in this Order at 16-17;

IT IS FURTHER ORDERED that any motions, petitions, objections or other matters in this proceeding that remain outstanding are hereby disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:	March 23, 2015
BRIEFS ON EXCEPTIONS DUE:	April 6, 2015
REPLY BRIEFS ON EXCEPTIONS DUE:	April 13, 2015

John T. Riley  
Administrative Law Judge